TEXAS MORTGAGE BANKERS ASSOCIATION

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December 24, 2009

Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20511

Re: Proposed Changes to Closed-End Mortgage Rules (Docket No. R-1366)

Dear Sir or Madam:

The Texas Mortgage Bankers Association ("TMBA") appreciates this opportunity to comment on the proposed rule amending Regulation Z with respect to closed-end mortgages ("Proposed Rule"). TMBA is the state trade association serving the Texas mortgage banking and real estate finance industry. TMBA is the third largest state mortgage bankers association.

TMBA members support enhanced consumer protection in the residential mortgage loan process. To this end, TMBA offers comments in the following areas that are of utmost importance to the Texas mortgage banking industry: loan originator compensation, the all-in finance charge, and the new formatting requirements for disclosures.

Loan Originator Compensation

The Proposed Rule would prohibit a lender from paying loan originator compensation based on loan terms or conditions, and would define "loan originator" to include employees of a lender. TMBA recognizes that compensating loan originators based on loan terms presents an opportunity for abuse and can result in loan terms that are not in the consumer's best interest. TMBA supports the Board's prohibition on steering, as well as the prohibition on compensating brokers based on loan terms or conditions. However, TMBA believes that concerns with broker compensation are not present in the context of lender employees. Lenders should be able to compensate their employees based on loan terms or conditions.

Need to Recognize Distinction Between Brokers and Lender Employees: Compensation based on loan terms or conditions that is paid to a lender employee does not present the same concern as in the broker context. The Proposed Rule is intended, in part, to address the problem that consumers have come to believe that mortgage brokers are acting in their best interest and only offer them the best interest rates and loan terms available.

This concern is not present in the context of lender employees. TMBA believes that because of this distinction, there is no need to regulate lender employee compensation.

Complex Loan Applications Require Additional Attention: TMBA represents large national lending institutions as well as small to mid-sized lending institutions. The larger national lending institutions may have an easier time adjusting to these proposed regulations, but small to mid-sized lenders – and consumers needing greater assistance with their mortgage applications – will be significantly affected. Consumers with complex loan applications that require a higher level of customer service often turn to small and mid-sized institutions that offer consumers tailored assistance and expertise in dealing with these special circumstances. Some larger banks and lending institutions are generally geared towards more of a "one size fits all" approach and may be less able to accommodate special requests or unique circumstances. The smaller TMBA members, however, rely on a flexible approach to loan originator compensation in order to offer this additional level of service to their customers by charging higher rates or fees commensurate with the higher level of expertise or services performed. This higher cost is then used, in turn, to compensate the loan originators that went the extra mile to secure the desired loan. In order to implement this fee-for-service model, there must be pricing discretion at the loan originator level. Informed consumers are willing to pay this type of premium for lenders to perform these extra services because they may not be able to get a loan otherwise.

Consider the following examples: One TMBA member recently received a mortgage loan application from a consumer who wanted an expedited closing. The consumer had submitted a loan application with a large bank, but had not gotten a response. In order to accommodate the consumer's request for expedited closing, the lender charged the consumer a higher rate to close the loan in eight days. Without the ability to compensate the loan originator, the lender would not have been able to guarantee a timely closing. Another TMBA member received a loan application from a consumer who had extremely complex tax returns. When printed out and stacked, the consumer's tax return documentation measured over one foot high. Any large or other lender that use a "one size fits all" approach may not have been able to process this consumer's complex application. However, the consumer agreed to pay a premium to the TMBA member to process this loan application. TMBA respectfully requests that the Board allow for loan pricing discretion at the loan originator level for lender employees.

As we believe is evident from the discussion above, the proposed prohibition on loan originator compensation, if adopted, may give some lending institutions an advantage, while unfairly hurting smaller or medium sized lending institutions who seek to give customized service to potential borrowers. Some lenders generally have a more standardized loan origination process, may not offer the extra customer service options available at smaller and mid-sized institutions and thus, may not need to vary the compensation paid to their loan originators. If the smaller institutions are not able to offer these specialized services to consumers, they will lose significant market share and be forced out of the market. Ultimately it will be consumer that needs specialized help and attention that will suffer. Often these consumers will be from underserved markets, and this consequence may produce an unintended redlining effect.

Too Much Regulation Too Fast: Additionally, TMBA notes that these proposed changes would be coming on the heels of several other significant regulatory efforts. First, the recent enactment of the SAFE Act and new RESPA rules will significantly affect loan originator activities and compensation. Because these changes are so recent, the full effects are not yet known. The new background checks and education requirements will likely alleviate many of the previous abuses that have been cause for concern.

In addition, the Board has recently adopted new regulatory rules applicable to the Mortgage Disclosure Improvement Act and to higher-priced mortgages. Both of these regulations offer significant new protections to consumers that should reduce concerns about past abuses.

TMBA respectfully requests that the Board should wait both to see how the SAFE Act and the new RESPA rules affect loan originator activities and compensation, and to determine how effective the new protections adopted under the MDIA and the higher-priced mortgage rules are before adopting even more restrictive regulations. As these other new regulatory initiatives take hold, they may prove that more regulations are not needed. TMBA is also concerned that adding additional regulatory complexity and restrictions on top of these other major regulatory changes will chill lending, limit credit availability and further slow down the nascent growth of the recovering housing market.

Need to at Least Restrict the Scope of the Proposed Rule: Finally, if the Board adopts the proposed restrictions on loan originator compensation, TMBA requests that the Board limit these restrictions to the risky products that caused the subprime meltdown. The Board wants to prevent loan originators from pushing consumers into risky products. Thus, the restrictions on loan originator compensation should be similarly limited to address the source of the problem. TMBA requests that the Board exclude conventional loans such as those approved by Fannie Mae, Freddie Mac, the Federal Housing Administration and the Veteran's Administration, as well as prime jumbo loans.

All-In Finance Charge

Including all third-party fees in the APR would have a detrimental impact on consumers. It would greatly reduce the ability of the consumer to compare interest rates and fees while shopping for credit. Such a change defeats one of the primary purposes of TILA which is to allow consumers to do an "apples-to-apples" comparison of rates and fees related to credit among various creditors. The APR could be identical in two mortgage products, but the third-party services and products could be quite different. Because different creditors offer different voluntary or optional products in connection with their mortgage loans, the proposed finance charge and APR definitions will result in potentially misleading comparisons of products.

Additionally, the proposed all-in finance charge would increase the APR on all mortgage loans and would bump many mortgages into the high-cost or higher cost category under HOEPA as well as the Texas high cost loan law. Due to the extreme regulatory risk of making a loan subject to HOEPA, or similar state high-cost loan laws, most creditors do not make these loans. Increasing the number of third-party fees and charges that are included in the finance charge will simply inflate the number of loans that could be subject to HOEPA and state high cost loan laws, and will further "tighten up" that segment of the credit market. This impact will be felt most acutely by borrowers in the most underserved markets.

A similar impact could be seen for loans that are considered "higher-priced mortgage loans." Creditors may choose not to make these loans to avoid, for example, the escrow requirements placed on these loans by the Board. We believe that the proposed treatment of finance charge and APR will serve to further "tighten up" available credit in a broader segment of the mortgage market.

We also point out that Congress specifically excluded from the finance charge on real estate secured loans many of the fees and charges the Board is now proposing to include in the finance charge. While the Truth in Lending Act gives the Board significant leeway in shaping its regulations, it is not clear that the Board may reject a very specific requirement in the Act.

New Formatting Requirements

While the TMBA supports many of the changes proposed for the content of disclosures under the Proposed Rule, the TMBA does not support the new formatting requirements in the Proposed Rule, particularly the use of a graphical display for the APR. Implementing the new formatting requirements will be extremely burdensome and costly for all lenders, and especially for small to mid-sized lenders.

With respect to the use of a graphical display for the APR, the cost of developing a variable chart, with shading, is significantly greater than providing specific information to complete a form. Also, it is unclear to what standard TMBA members would be held to in achieving an accurate graphical display. Would a creditor be subject to civil money penalties, or even rescission, for producing a chart that places the offered APR slightly too close or too far away from "the high cost zone"? We believe providing information in a textual form is sufficient for disclosure purposes.

It is also unclear why the proposed graphical disclosure tells a consumer about a "best" rate for which the consumer does not qualify. If the Board is concerned that borrowers are paying rates that are higher than they are qualified for, this is best handled by enforcement under the Equal Credit Opportunity Act. It is unfair to ask TMBA members to point out to their customers that some of them are not as qualified as other applicants. The same concern arises regarding the disclosure of what a consumer "could save" if the interest rate was 1% lower. Again, the Proposed Rule seems to require lenders to give borrowers an expectation that their rates could be lower. This seems misleading at best, and perhaps even cruel, where the borrower has been provided the best rate available for the type of loan and the type of services offered by the lender.

TMBA appreciates the opportunity to comment on the Proposed Rule. Please feel free to contact me with any questions at (713) 962-2260.

Respectfully submitted,

John Watson, President
Texas Mortgage Bankers Association